

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 36

March 10, 1999, 2:04 p.m.
Page S-2478 Temp. Record

EDUCATION MANDATE WAIVERS/Federal Funds to Hire Teachers, Cloture

SUBJECT: Education Flexibility Partnership Act . . . S. 280. Murray motion to close debate on the Kennedy/Daschle motion to recommit with instructions.

ACTION: CLOTURE MOTION REJECTED, 44-55

SYNOPSIS: As reported, S. 280, the Education Flexibility Partnership Act, will expand eligibility for participation in the Education Flexibility (Ed-Flex) Program to all 50 States (currently only 12 States are eligible). Under the program, an eligible State may request that the Department of Education give it the right to grant to local education agencies waivers of certain Federal education regulatory and statutory requirements. A State that gives a waiver to a local education agency also must waive its own similar statutory and regulatory education requirements. Certain Federal regulatory and statutory requirements, including requirements relating to health and safety and civil rights, may not be waived. (Federal education funding provides between 6 percent and 7 percent of total public school funding, a third of which is for nutrition rather than education programs. The Federal Government closely controls how the funds it gives are spent, which hampers local innovation. Also, the 4 percent of funding that it gives is responsible for more than 50 percent of the administrative work in many school districts, due to the extensive paperwork requirements that come with Federal assistance.)

The Kennedy motion to recommit the bill with instructions would direct the committee to report the bill back forthwith with the addition of the Kennedy/Murray amendment; the Kennedy/Murray amendment would authorize \$11.435 billion over fiscal years (FYs) 2000-2005 for a new Federal program to hire public school teachers. In last year's omnibus appropriations bill (see 105th Congress, second session, vote No. 314), \$1.2 billion was appropriated to give local grants to hire teachers, though no program had been authorized for that purpose. That funding has not yet been distributed to local school districts. It is not scheduled to be distributed until July. Under the terms of last year's appropriations bills: none of the funding will be used to pay for State or Federal administrative expenses, and local educational agencies (LEAs) will not spend more than 3 percent of the amounts received on such expenses; none of the funds will be used to increase teacher pay or benefits, or to substitute for State or local funds used to hire new

(See other side)

YEAS (44)		NAYS (55)		NOT VOTING (1)	
Republicans (0 or 0%)	Democrats (44 or 100%)	Republicans (55 or 100%)	Democrats (0 or 0%)	Republicans (0)	Democrats (1)
Akaka	Johnson	Abraham	Hutchinson		Murray ⁴
Baucus	Kennedy	Allard	Hutchison		
Bayh	Kerrey	Ashcroft	Inhofe		
Biden	Kerry	Bennett	Jeffords		
Bingaman	Kohl	Bond	Kyl		
Boxer	Landrieu	Brownback	Lott		
Breaux	Lautenberg	Bunning	Lugar		
Bryan	Leahy	Burns	Mack		
Byrd	Levin	Campbell	McCain		
Cleland	Lieberman	Chafee	McConnell		
Conrad	Lincoln	Cochran	Murkowski		
Daschle	Mikulski	Collins	Nickles		
Dodd	Moynihan	Coverdell	Roberts		
Dorgan	Reed	Craig	Roth		
Durbin	Reid	Crapo	Santorum		
Edwards	Robb	DeWine	Sessions		
Feingold	Rockefeller	Domenici	Shelby		
Feinstein	Sarbanes	Enzi	Smith, Bob		
Graham	Schumer	Fitzgerald	Smith, Gordon		
Harkin	Torricelli	Frist	Snowe		
Hollings	Wellstone	Gorton	Specter		
Inouye	Wyden	Gramm	Stevens		
		Grams	Thomas		
		Grassley	Thompson		
		Gregg	Thurmond		
		Hagel	Voinovich		
		Hatch	Warner		
		Helms			

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

teachers; funds will be distributed by formula (80 percent will be based on the number of poor children in an LEA's schools and 20 percent will be based on the total number of children in an LEA's district); funds will be used to recruit, hire, and train certified regular and special education teachers and teachers of special-needs children, including teachers certified through State and local alternative routes; funds will also be used for teacher testing or certification and for providing professional development, including for special education teachers and teachers of special-needs children, though no more than 15 percent of funds will be used for the second two purposes; and if an LEA has reduced class size to 18 or fewer students, it will be allowed to use any amount of funds for improving teacher quality, including through professional development (though the 15-percent restriction will still apply to teacher testing or certification). The Kennedy/Murray amendment would authorize funding over the next 6 years under essentially the same terms as it was appropriated without authorization in last year's omnibus bill, with the main exception being that in FYs 2004-2005 it would not permit any funds to be used for teacher testing or certification.

On March 8, 1999, Senator Murray sent to the desk, for herself and others, a motion to close debate on the Kennedy motion.

NOTE: A three-fifths majority (60) vote is required to invoke cloture.

The following items were pending at the time of the vote: a committee substitute amendment; a Bingaman amendment, as amended, to the committee substitute amendment; a modified Lott second-degree substitute amendment to the Bingaman amendment; an Allard/Gramm amendment to the language proposed to be stricken by the committee substitute amendment; a Jeffords substitute amendment to the Allard/Gramm amendment; a Lott substitute amendment to the instructions of the Kennedy/Daschle motion; and a Lott perfecting amendment to the Lott amendment to the Kennedy/Daschle motion. See vote No. 35 for descriptions of these amendments.

Those favoring the motion to invoke cloture contended:

Last spring the junior Senator from Washington offered an amendment to reduce class size by hiring 100,000 new public school teachers. It was rejected on a partisan vote. The matter did not end there, though. The junior Senator from Washington continued to work with Members in an effort to forge a compromise. She succeeded on last year's omnibus appropriations bill. During last-minute negotiations on that bill, the leadership of both parties and the Clinton Administration agreed on an approach and appropriated \$1.2 billion. Authorizing language had yet (and has yet) to be enacted, but instructions were given for that spending that mimicked authorizing legislation. Numerous compromises were included to gain Republican acquiescence. Provisions were added to make sure none of the money would be used to pay for State or Federal administrative costs, to make sure that States could spend a large part of the funds to hire and train teachers for children with disabilities or other special needs, and to allow States to use a large part of the funds to provide additional training for teachers, to test teachers, and to certify teachers, including using alternative forms of certification. The final language that was put into that conference report was significantly different than the proposal that was originally offered. After the bill was passed, both Democratic and Republican Members who were running for reelection ran advertisements claiming credit for the proposal to hire teachers. Now that the election is over, though, Republicans are again saying that the proposal is unacceptable, and they are resisting efforts to add authorizing language to this bill that will create the 100,000 teacher program and that will authorize funding for it over the next 6 years, as was envisioned in the bipartisan agreement reached on last year's omnibus appropriations bill. Again, we Democrats are not going to accept "no" for an answer. We will continue to press this issue until we succeed. We will not be unreasonable--if it takes further compromises, we are willing to make them.

The need for hiring more teachers in the early grades is very clear. Several recent studies have shown that by giving more individualized attention to students in their first years in school, student performance can be greatly improved in their later years. For instance, one study in Tennessee of over 7,000 students found that students who were in small classes in grades one through three did much better academically than their counterparts right through high school. In all honesty, though, we do not think that any Senator should really need studies to know that the fewer students a teacher has the better job that teacher is going to be able to do teaching those students. Every parent in America understands this common sense proposition. After the first day of school, one of the first things parents ask their children is how many other kids there are in class. They do not want there to be a lot; they want their kids to be able to get a lot of individual attention so any problems that they have can be nipped in the bud rather than be allowed to compound over the years. The junior Senator from Washington once was a primary school teacher. She knows from first-hand experience that large class sizes force teachers to accept the reality that kids can become losers in life beginning at age 6. When teachers do not have time to help kids who struggle at an early age, those kids get left behind. Each year the problem then compounds. It is a tragedy to allow that to happen. Every child deserves help in reaching his or her full potential. We therefore strongly urge our colleagues to join us in supporting cloture, and then to join us in passing the Murray amendment to hire 100,000 new public school teachers for the early grades.

Those opposing the motion to invoke cloture contended:

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Last year Congress broke the budget rules and provided \$1.2 billion for a program that did not exist. That program was to have the Federal Government pay to hire 100,000 public school teachers in the "early" grades. It was created by a few negotiators in a back room at the very end of the session. The money was added to a mammoth, 4,000-page, \$500-billion omnibus appropriations bill that contained numerous offensive proposals. More than half of last year's surplus, which should have been saved for Social Security, was squandered at Democratic insistence, and Republican negotiators weakly acquiesced because they feared that if they did not they would again be blamed for a Government shutdown. One of those offensive proposals was the Murray \$1.2 billion plan to hire public school teachers. Once the bill was plastered together and a few copies were made, it was presented to Members, Democrats and Republicans, for a vote. Few Members had any input into the design of the bill or even knowledge of its contents. Even if they had known what it contained, though, they were powerless to do more than vote yes or no. The Constitution was turned on its head, with the Clinton Administration doing most of the writing of the bill, and Congress being left with no more than the right to accept or reject it. Congress turned itself into a third-world, bastardized parliament last year, filled with Members looking so resplendent but who were really just powerless window-dressing. On that omnibus appropriations bill, in the sorry process just described, money was appropriated for hiring teachers. Our Democratic colleagues call that 1-year appropriation a "bipartisan" agreement to pass legislation and appropriate ever increasing amounts through the year 2005 to hire more teachers. We obviously reject that characterization.

In all fairness, Republican negotiators did win some improvements to the Murray proposal. For instance, if a school district already has class sizes in the early grades of 18 or fewer students (and the average class size in America is already under 18 students), then it does not have to spend any of the money on hiring teachers. It can instead spend it on professional development, including training for teachers of students with disabilities or special needs. That provision and other similar provisions will make it possible for most school districts to spend some or all of the money (when they receive it; they will not get a cent before July) on children with disabilities instead of on hiring new teachers.

This fact is significant, because whether the Federal Government provides money for special education or not, local school districts are required under the Individuals with Disabilities Education Act (IDEA) to provide education to children with disabilities and with special needs. The IDEA mandates are detailed and expensive, costing \$40 billion annually (that cost will soon rise due to a recent Supreme Court decision that local schools must start paying for medical care for special-needs students as well; those costs are now largely paid for by the Federal Government). When Congress enacted the IDEA in the 1970s it promised that it would pay 40 percent of the costs. It has never met that commitment. Currently it pays 11 percent, which is at least up from the 6 percent it paid when Democrats controlled Congress. Due to the modifications made by Republican negotiators, local education agencies will be able to use part or all of the \$1.2 billion they get paying for IDEA mandates. If they do, they will free some of their own funds that they would otherwise have had to spend on those mandates. They will then be able to use those freed funds for any educational purpose they wish, whether it is to buy books or computers, to build new schools, to hire teachers, to pay for professional training, to improve security, to add new courses, to hire tutors, to start charter schools, to promote school choice, or to meet any other local educational need. Not all districts will get the choices they completely want--beyond any doubt, many school districts will be forced to use a large part of their money to reduce classroom size, even if they have much more pressing needs, even though the supposed benefits of reducing classroom size are dubious at best, and even though the proposed way of reducing classroom size is untested and may prove to be counterproductive.

In support of their claim that reducing classroom size will have large benefits, our Democratic colleagues have cited a couple of studies and have trotted out the "everybody knows" argument. In particular, they have noted, correctly, that an objective analysis of the STAR program in Tennessee has found long-term benefits for children who were in small classes in the early grades. However, that study and one or two other studies cannot be looked at in isolation without getting a hugely distorted view of reality. We note, for instance, that average classroom sizes in America have been falling dramatically over the years, yet student performance has slipped rather than improved. The average classroom size across the country, in fact, is already under the goal set by this amendment, yet the miracle cure for education performance envisioned by our Democratic colleagues obviously has not materialized. Also, our colleagues do not mention the hundreds of studies that have been done over the years that have found almost no correlation between the number of students in a class and student performance. Yet another point our colleagues fail to mention is that other studies have consistently shown that other types of reforms typically yield more improvements at less cost than hiring new teachers. For instance, providing additional training for existing teachers has often been found to result in significant educational improvement by students. As if all of the above were not enough, our colleagues also totally ignore the fact that the students they say they are trying to help in the early grades are doing much better comparatively than are older students. For instance, America's fourth graders, on objective international tests, perform better than students in nearly all other countries of the world; America's eighth graders are about average by world standards; America's twelfth graders are at the bottom of the heap. Our colleagues have not adequately explained why they think that the best way to help failing older students is to give more help to students when they are younger and doing well.

The "everybody knows" argument that is advanced by our colleagues is frankly their better argument. They say that common sense tells us that if a teacher has fewer students to teach, that teacher will be able to give more individual attention to each student,

and as a result student performance will increase. The argument makes so much intuitive sense that it is hard to square with the reality that declining classroom sizes across America have not led to across-the-board increases in educational performance. One suspects that the problem may be that other needed reforms are not being made, and are thereby preventing benefits from lower classroom size from being realized. The junior Senator from Washington, a former primary school teacher, has said she knows from experience that having fewer students per class helps, and we do not doubt her sincerity. Still, an "everybody knows" argument is not enough reason to support an expensive solution that has had mixed results at best.

It is especially not reason enough to support the solution as it has been proposed in the Murray amendment. This amendment would give money for 6 years and would then stop. Hiring teachers is an expensive proposition--where would districts get money for those teachers once the Federal well ran dry? Unlike the Federal Government, most State and local governments have strict requirements to live within their budgets. Those local governments would likely end up either cutting other educational priorities to keep the new teachers or else firing them. The Federal Government should not get involved in skewing State and local priorities in this manner.

At a more fundamental level, it is distrust by Democrats of State and local priorities, and abilities, that prompts them to offer amendments such as the Murray amendment in the first place. Democrats think that Federal mandates are necessary to make sure that State and local governments behave by giving decent educations to all of their students, and they think that Federal mandates are necessary because they believe that State and local governments are too stupid to get the job done without detailed instructions from the Federal Government. Thus, for instance, Democrats believe that it was very appropriate for the Federal Government to impose detailed IDEA mandates in the 1970s because many States at that time were not giving adequate educations to children with special needs. Democrats believe that the fact that many States were not "mainstreaming" their children with special needs shows that States just did not care enough and were not smart enough to know how to teach those children. Democrats do not pause to think that the Federal Government, for nearly 200 years, had also not imposed such requirements. Was it mean and stupid until the 1970s, when it suddenly became enlightened and passed the IDEA? Also, Democrats do not pause to think that Congress acted amid a growing national awareness of the need to improve education for special-needs children that was causing many States to start improvements on their own. Congress stepped into the middle of the process, federalized the solution, and imposed \$40 billion worth of annual mandates on the States.

The debate on the Murray amendment, and on other Democratic proposals to federalize various perceived problems with public education, is very similar to the debate we had on welfare reform. Republicans argued strongly that all wisdom and kindness does not emanate from Washington. They said that if we removed the process requirements, provided funding, and rewarded results, States would come up with better solutions for their unique needs and people would be moved from welfare to work. States are succeeding phenomenally. Some are obviously doing better than others, and they are learning from each others' successes and are copying each other. Rather than having one uniform, failed solution from the Federal Government, locally tailored plans, and competition among plans, is yielding results. Democrats tried to keep as much Federal control as possible, but in the end they supported the bill because they had to admit that the welfare system was a failure, especially for the millions of Americans who were trapped in it. The bill before us is in the same mold as the welfare reform bill. It will expand the current Ed-Flex program that is currently working in 12 States. Local educational agencies in those States can get waivers from Federal process requirements, and they are then monitored to see if they are able to improve education as a result of those waivers. Not one waiver has been abused, and local education agencies have been doing better without Federal mandates. As a result, all 50 Governors, Republicans and Democrats, have asked that Congress give every State waiver authority.

Democrats in Congress do not want to publicly oppose such a popular proposal, but it does go against their basic inclinations to remove Federal mandates. They have therefore been trying to offer a series of amendments such as the Murray amendment that would create new Federal education programs that they know Republicans oppose. They are trying to kill this bill with amendments. We will resist those efforts. The Senate will soon consider the reauthorization of the Elementary and Secondary Education Act (ESEA), at which time proposals such as the Murray amendment may properly be considered, and at which time compromises may be reached. We are not demanding all or nothing; we are only demanding that this bill not be loaded up with controversial amendments. Therefore, we oppose the motion to invoke cloture.